

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE CARLTON SMITH,

No. C 13-3316 MEJ (pr)

Plaintiff,

**ORDER TO FILE MOTION FOR
SUBSTITUTION OF FACE
DISMISSAL OF DEFENDANT
ZORNES**

v.

L. STEPP, et al.,

Defendants.

Plaintiff Lawrence Carlton Smith filed a *pro se* civil rights action under 42 U.S.C. § 1983. On September 23, 2014, defense counsel notified the court that the Office of the Attorney General was informed that Defendant Zornes has been deceased since October 2012. Thus, Defendant Zornes has not been served, and the Office of the Attorney General does not represent him or his successors.

When a party dies and the claim is not extinguished, the court may order substitution of the deceased party with the proper legal representative. Fed. R. Civ. P. 25(a); *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996). Any party to the action or the deceased party's successors may file a "statement of fact of death" of the deceased party. The statement is served and filed in the same manner as a motion generally. *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). However, service of the statement of death on non-party successors or representatives must be effected in the manner provided in the Federal Rule of Civil Procedure 4 for service of a summons. *Id.* at 233. This commences the running of the 90 day period for substitution motions set forth in Rule 25(a)(1). *Id.*

Because it is not clear whether plaintiff's claims could survive Defendant Zornes'

1 death if pursued by his successors or representatives, the court will not dismiss this the
2 claims against him at this time. Plaintiff has 90 days from the filing date of this order locate
3 Defendant Zamora's successors or representatives and file a motion for substitution if
4 plaintiff wishes to substitute Defendant Zamora's successors or representatives in this action.
5 If no motion for substitution is filed within 90 days, the claims against Defendant Zornes will
6 dismissed by the court.

7 IT IS SO ORDERED.

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9 DATED: OCTOBER 2, 2014


10 Maria-Elena James
11 United States Magistrate Judge
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